

### **REMARKS**

In order to particularly point out and distinctly claim the subject matter which Applicant considers as the invention, Applicant has amended claim 1 to positively recite the presence of a loading tray, reagent server and reagent carousel. The specification has been amended to use patent application publication numbers where possible.

#### ***Claim Rejections –35 USC §112***

Claims 2 and 3 are rejected under 35 USC 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant considers as the invention. In response, Claim 1 has been amended to positively recite the presence of the loading tray, reagent server and reagent carousel.

#### ***Claim Rejections –35 USC §102***

Claims 1-6 are rejected under 35 U. S. C. 102(e) as being anticipated by U. S. Patent 6,571,934 to Thompson et al. This reference contains subject matter that was owned by the same entity (Dade Behring Inc.) or subject to an obligation of assignment to the same entity (Dade Behring Inc.) at the time the claimed invention was made. According to MPEP 706.06(I)(1), dealing with rejections under 35 USC 102(e)/103,

Effective November 29, 1999, subject matter which was prior art under the former USC 103 via 35 USC 102(e) is now disqualified as prior art against the claimed invention if that subject matter and the claimed invention “were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

A Declaration signed by a duly authorized officer of Dade Behring Inc. is included with this communication declaring that U. S. Patent 6,571,934 to Thompson et al. and the claimed invention were owned by the same entity (Dade Behring Inc.) or subject to an obligation of assignment to the same entity (Dade Behring Inc.) at the time the claimed invention was made. For this reason, it is believed that U. S. Patent 6,571,934 to Thompson et al. is not valid prior art against the claimed invention and Applicants respectfully request that the rejection of claims 1-6 under USC 102(e) be withdrawn.

### ***Claim Rejections –35 USC §102***

Claims 1-6 are rejected under 35 U. S. C. 102(e) as being anticipated by U. S. Patent 6,723,288 to Devlin et al.

A Declaration signed by a duly authorized officer of Dade Behring Inc. is included with this communication declaring that U. S. Patent 6,723,288 to Devlin et al. and the claimed invention were owned by the same entity (Dade Behring Inc.) or subject to an obligation of assignment to the same entity (Dade Behring Inc.) at the time the claimed invention was made. For the reasons cited above, it is believed that U. S. Patent 6,723,288 to Devlin et al is not valid prior art against the claimed invention and Applicants respectfully request that the rejection of claims 1-6 under USC 102(e) be withdrawn.

### ***Double Patenting***

Claims 1 and 7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U. S. Patent No. 6,725,288. In response, a terminal disclaimer in accord with 37 CFR 1.321(c) disclaiming the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of prior patent U. S. Patent No. 6,723,288 accompanies this communication. Applicants therefore

respectfully request that the rejection of claims 1 and 7 under the judicially created doctrine of obviousness-type double patenting be withdrawn. Please charge the fee of \$130 required under 37 CFR 1.20(d) or any additional amount required for filing this Disclaimer to our Deposit Account No. 04-0010.

### **Conclusion**

Applicants believe that this application contains patentable subject matter and that the foregoing amendments provide a basis for favorable consideration and allowance of all claims; such allowance is respectfully requested. If any matter needs to be resolved before allowance, the Examiner is encouraged to call Applicant's representative at the number provided below.

Respectfully submitted,



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